Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

MEMORANDUM OF PETITIONERS SUGGESTING THAT THE CAUSE IS MOOT.

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In light of this Court's decision in *Board of School Commissioners of Indianapolis* v. *Jacobs,* 420 U.S. 128 (1975), Petitioners feel it incumbent on them to point out that this case may be moot.

Here, as in the *Jacobs* case, the named parties plaintiff have been graduated. (See Appendix A, hereto, Affidavit of Ramon C. Cortines, Superintendent of Schools for the Pasadena Unified School District.) Here, as in *Jacobs*, there has been no compliance with the requirements of Rule 23(c) of the Federal Rules of Civil Procedure. (See Appendix B, hereto, Affidavit of Lee G. Paul, Attorney for Petitioners.) The reasoning of this Court in the *Jacobs* case is, thus, equally applicable to this one:

> The only formal entry made by the District Court below purporting to certify this case as a class action is contained in that court's "Entry on Motion for Permanent Injunction," wherein the court "conclude[d] and ordered" that "the remaining named plaintiffs are qualified as representatives of the class whose interest they seek to protect." 349 F. Supp. at 611. No other effort was made to identify the class or to certify the class action as contemplated by Rule 23(c)(1); nor does the quoted language comply with the requirement of Rule 23(c)(3) that "[t]he judgment in an action maintained as a class action under subdivision . . . (b)(2) . . . shall include and describe those whom the court finds to be members of the class." The need for definition of the class purported to be represented by the named plaintiffs is especially important in cases like this one where the litigation is likely to become moot as to the initial named plaintiffs prior to the exhaustion of appellate review. Because the class action was never properly certified nor the class properly identified by the District Court, the judgment of the Court of Appeals is vacated and the case is remanded to that court with instructions to order the District Court to vacate its judgment and dismiss the Complaint. [420 U.S. at 129-130.]

"In the complaint originally filed in this action Plaintiffs and Respondents Nancy Anne Spangler, Judith R. Clarke and Vivion Rostker allege that said action was brought on behalf of themselves and "all others similarly situated". Nevertheless, I am aware of no testimony, evidence or orders in said action relating to the identification of said plaintiffs as a class. I am further aware of no orders in the files of said action that purport to comply with the

> requirements of Rule 23 of the Federal Rules of Civil Procedure relating to the identification of a class of plaintiffs." (Affidavit of Lee G. Paul, App. B.)

Should this Court find that this case, like the *Jacobs* case, is moot, the judgments of the courts below should be vacated and the action should be dismissed.

Respectfully submitted,

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APPENDIX A.

(Original filed in the office of the Clerk)

AFFIDAVIT OF RAMON C. CORTINES.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

I, Ramon C. Cortines, being first duly sworn, say:

1. I am the Superintendent of Schools for the Pasadena Unified School District. In such capacity I have access to and control over the records of said School District, including all records showing the attendance and performance of Nancy Anne Spangler, Judith R. Clarke and Vivion Rostker while they were enrolled at schools in said School District. To my knowledge, these three individuals are the only persons named as plaintiffs in the action entitled *Spangler* v. *Pasadena City Board of Education.*

2. Said records reflect that Nancy Anne Spangler was graduated from John Muir High School on June 18, 1970; that Judith R. Clarke was graduated from John Muir High School on June 18, 1970; and that Vivion Rostker was graduated from Pasadena High School on June 17, 1971.

3. Since their respective graduations none of the aforementioned individuals has been enrolled as a student at any school in the Pasadena Unified School District.

/s/ RAMON C. CORTINES
Ramon C. Cortines

Subscribed and sworn to before me this 11 day of September, 1975.

/s/ JEAN C. CARSON
Notary Public in and for said County and State

APPENDIX B.

(Original filed in the office of the Clerk)

AFFIDAVIT OF LEE G. PAUL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

I, Lee G. Paul, being first duly sworn, say:

1. I am an attorney at law, licensed to practice before this Court and all courts in which the case of *Spangler* v. *Pasadena City Board of Education* has been heard. I am a member of the firm of Paul, Hastings & Janofsky (formerly Paul, Hastings, Janofsky & Walker), attorneys for Petitioners herein, and have been the attorney in said firm with primary responsibility for the representation of Petitioners in this action since November 1973.

2. In connection with said representation, I made all oral arguments on behalf of Petitioners and either conducted or supervised the examination or cross-examination of witnesses at the hearing before the United States District Court for the Central District of California on the motion of petitioners that is the subject of the petition for writ of certiorari herein.

3. In the complaint originally filed in this action Plaintiffs and Respondents Nancy Anne Spangler, Judith R. Clarke and Vivion Rostker allege that said action was brought on behalf of themselves and "all others similarly situated". Nevertheless, I am aware of no testimony, evidence or orders in said action relating to the identification of said plaintiffs as a class. I am further aware of no orders in the files of said action that purport to comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure relating to the identification of a class of plaintiffs.

4. Notwithstanding the lack of such class action orders, the injunctions issued by said District Court against Petitioners in this action have at all times been based upon an apparent assumption that this action is and at all times was indeed a class action. For example, all District Court orders addressed to Petitioners have directed Petitioners to grant the relief specified in such orders to all students in the Pasadena Unified School District. Moreover, although said named Respondents have all long since graduated from the Pasadena Unified School District, said District Court continues to treat the instant case as a class action and continues to order Petitioners to grant relief to all students in said School District.

/s/ LEE G. PAUL
Lee G. Paul

Subscribed and sworn to before me this 11th day of September, 1975.

/s/ JEAN C. CARSON
Notary Public in and for said County and State